

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Jonathan Tasini, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

AOL Inc., TheHuffintonPost.Com, Inc.,  
Arianna Huffington and Kenneth Lerer

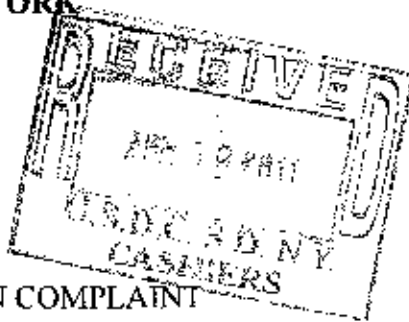
Defendants.

ECF CASE

CIVIL ACTION:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED



CLASS ACTION COMPLAINT

Plaintiff and putative Class Representative Jonathan Tasini ("Tasini" or "Plaintiff"), brings this action both individually and on behalf of damages and injunctive relief classes (collectively, "the Classes," as further defined herein), alleging as for their Class Action Complaint against Defendants AOL Inc. ("AOL"), TheHuffingtonPost.com, Inc. ("TheHuffingtonPost.com"), Arianna Huffington and Kenneth Lerer, upon personal knowledge as to himself and as to all other matters upon information and belief, based on, *inter alia*, the investigation made by his attorneys signed below, as follows:

PRELIMINARY STATEMENT

1. This action seeks to vindicate the fundamental principle that the creators of value deserve to be compensated and, in particular, addresses the important issues of (a) whether in the digital age, profitable digital media sites should be required to compensate the creators of valuable content from which such sites derive substantial revenues and (b) if so, how the creators of content should be compensated.

2. TheHuffingtonPost.com has been unjustly enriched by engaging in and continuing to engage in the practice of generating enormous profits by luring carefully-vetted contributors, with the prospect of "exposure" (which TheHuffingtonPost.com deceptively fails to verify), to provide valuable content at no cost to TheHuffingtonPost.com, while reaping the entirety of the financial gain derived from such content.

3. Due to the valuable and uncompensated efforts of Plaintiff and the Classes, the cost of high quality content at the TheHuffingtonPost.com was, and continues to be, extremely low, making TheHuffingtonPost.com an extremely valuable internet property. As set forth below, when TheHuffingtonPost.com was recently acquired by AOL for \$315 million, the value added by the content provided by Plaintiff and the Classes to TheHuffingtonPost.com's price was at least \$105 million, none of which was shared with Plaintiff and the Classes.

4. The injustice experienced by Plaintiff and the Classes is compounded by the fact that Plaintiff and the Classes were selected, and in some cases sought, by Defendants because of their ability to produce high quality, engaging, content for the TheHuffingtonPost.com. The content provided by the Plaintiff and the Classes drove, and continues to drive, internet traffic to TheHuffingtonPost.com, creating revenue for that enterprise, none of which is shared with Plaintiff and the Classes.

5. Moreover, Plaintiff and the Classes were, and continue to be, asked to drive internet traffic to TheHuffingtonPost.com by using social networking media and to advise internet users of the valuable content they provided to TheHuffingtonPost.com, and by so doing increase internet traffic to TheHuffingtonPost.com.

6. Finally, and perhaps most importantly, TheHuffingtonPost.com's continued assertion that it, alone, should be enriched by the valuable content provided by Plaintiff and the

Classes has the broad detrimental effect of setting an artificially low price for the valuable digital content created by Plaintiff and the Classes, depressing the market for such content and, over the long term, having a serious depressing effect on the value of intellectual content being created by Plaintiff and the Classes and on the ability of Plaintiff and the Classes to support themselves as creators of high quality, engaging, digital content. According to Article 1, Section 8 of the United States Constitution, the purpose of copyright is “to promote the Progress of Science and useful Arts” by allowing creators to be appropriately compensated for their contributions. Yet, despite our founders’ intent, TheHuffingtonPost.com continues to assert that it, alone, should be enriched by the valuable content provided by Plaintiff and the Classes.

7. As set forth within, this action is instituted in accordance with and to remedy Defendants’ inequitable, unfair, unlawful and unjust gain at the expense of the Plaintiff and the Classes. Plaintiff and the Classes bring this action both individually and as a class action to recover damages and to enjoin Defendants’ unlawful conduct as it affects the Classes.

8. Defendants’ mistreatment of Plaintiff and the Classes was in fact indiscriminate, occurring in the regular course of Defendants’ business throughout the United States and Canada, whereby Plaintiff and the Classes were treated in the same general manner by Defendants.

9. Plaintiff and the Classes therefore seek to recover actual, statutory, treble, and other damages as well as declaratory, injunctive and equitable relief (as set forth below, declaratory and injunctive relief is only requested by the “Declaratory and Injunctive Relief Class”), together with reasonable attorneys’ fees and costs.

#### **PARTIES**

#### **PLAINTIFF AND THE CLASSES**

10. Plaintiff Tasini is a natural person who resides in New York County, New York.

11. Tasini has worked as a union leader and organizer, a social activist, and a commentator and writer on topics including the changing nature of work, organized labor and broader economic issues. From 1990 to April 2003, he served as president of the National Writers Union (United Auto Workers Local 1981).

12. Tasini was the lead Plaintiff in *Tasini v. The New York Times*, the landmark electronic rights case that addressed the scope of copyrights belonging to thousands of freelance authors. Mr. Tasini won that case on behalf of himself and a class of copyright holders at the United States Supreme Court.

13. For the last 25 years, Tasini has written about labor and economics for a variety of newspapers and magazines including *The New York Times Magazine*, *The Atlantic*, *Business Week*, *The Washington Post*, *The Village Voice*, *The Los Angeles Times*, and *The Wall Street Journal*. Like many writers for these publications, Tasini was compensated for the content he provided.

14. Tasini is the author of four books: *It's Not Raining, We're Getting Peed On: The Scam of the Deficit Crisis*; *The Audacity of Greed: Free Markets, Corporate Thieves and The Looting of America*; *The Edifice Complex: Rebuilding the American Labor Movement to Face the Global Economy, a critique and prescriptive analysis of the labor movement (1995)*; and *They Get Cake, We Eat Crumbs: The Real Story Behind Today's Unfair Economy, an average reader's guide to the economy (1997)*. Tasini is compensated for his writings through advances and royalties.

15. Tasini also owns and operates a blog called "Working Life" ([www.workinglife.com](http://www.workinglife.com)), which explores the economy and the labor movement. Tasini realized

revenue from www.workinglife.com. Until 2010, Tasini did not select contributors to the Working Life blog but, rather, allowed members of the general public to provide content without regard for the ability to realize revenue.

16. In 2006, Tasini ran for the Democratic nomination for United States Senator for New York. In 2010, Tasini ran for the Democratic nomination for New York's 15th Congressional District.

17. In 2005, Tasini was selected to contribute to TheHuffingtonPost.com. Attesting to the value provided by Tasini to TheHuffingtonPost.com, Defendant Arianna Huffington personally invited Tasini to provide content to TheHuffingtonPost.com. Upon information and belief, Ms. Huffington knew of Tasini's ability (due, in part, to his political campaign) to garner internet traffic and thereby increase revenues for TheHuffingtonPost.com.

18. From December 2005 forward, the TheHuffingtonPost.com realized revenue from the content Tasini provided. Each piece of content Tasini provided was accessible from the TheHuffingtonPost.com's home page by following a series of links. Tasini received numerous page views and generated revenues for TheHuffingtonPost.com. However, TheHuffingtonPost.com has not disclosed the amount of page views Tasini received and the amount of revenue generated by the content Tasini provided.

19. Tasini provided the following 216 pieces of content:

- "Free Trade": The Capitulation Continues, Middle Class Weeps, posted on February 10, 2011 with 1,416 words and 1 Facebook share.
- The White House Hoists White Flag of Surrender, posted on February 9, 2011 with 947 words, 5 Facebook shares, 7 tweets, and 26 comments.
- Wall Street Pay 'Vaults to Record Altitude', posted on February 2, 2011 with 539 words, 30 Facebook "Likes," 15 Facebook shares, 1 tweet, and 3 comments.
- Our Demand: Increase Social Security Benefits, posted on January 25, 2011 with 732 words, 2 Facebook shares, 19 tweets, 14 e-mailed and 33 comments.
- Wal-Mart Whitewashing, posted on January 20, 2011 with 1,060 words, 2 Facebook shares, 13 tweets, 2 e-mailed and 4 comments.

- Richard Trumka v. Goldman Sachs: Different Visions of America, posted on January 19, 2011 with 664 words, 2 Facebook "Likes," 16 tweets, 2 e-mailed and 3 comments.
- Bernie Madoff To Replace Elizabeth Warren (Snark Alert), posted on January 14, 2011 with 1,193 words.
- Scalia et al Make Up Corporate Constitutional Rights, posted on January 14, 2011 with 863 words, 7 Facebook "Likes," 4 Facebook shares, 25 tweets, 1 e-mailed.
- *New York Times* Fuels War Against The Middle Class, posted on January 2, 2011 with 1180 words.
- Class Warfare and Korca "Free Trade": An Open Letter to UAW, My Union, posted on December 9, 2010 with 2,920 words, 7 Facebook shares, 29 tweets, 3 e-mailed and 2 comments.
- Catfood Commission Dead: Thank God, posted on December 3, 2010 with 1,080 words, 28 Facebook "Likes," 11 Facebook shares, 23 tweets, and 7 comments.
- It's Not Raining, We're Getting Peed On (4): The Scam of the Deficit Crisis, posted on December 2, 2010 with 1,526 words, 12 Facebook shares, 1 tweet, and 2 comments.
- It's Not Raining, We're Getting Peed On (3): The Scam of the Deficit Crisis, posted on December 1, 2010 with 1,450 words, 30 Facebook "Likes," 8 Facebook shares, 2 tweets, and 2 comments.
- *It's Not Raining, We're Getting Peed on* (II): The Scam of the Deficit Crisis, posted on November 30, 2010 with 1,226 words, 31 Facebook "Likes," 16 Facebook shares, 7 tweets, 1 e-mailed and 2 comments.
- It's Not Raining, We're Getting Peed On (1): The Scam of the Deficit Crisis, posted on November 29, 2010 with 1,441 words, 43 Facebook "Likes," 23 Facebook shares, 35 tweets, and 1 comment.
- Melissa Bean, Corporate Voice, Instead of Elizabeth Warren? No Way., posted on November 10, 2010 with 749 words, 8 Facebook "Likes," 3 Facebook shares, 7 tweets, and 3 comments.
- Kiss The Jobs and Wages Goodbye: Hello "Free Trade" Again posted on November 4, 2010 with 1,357 words, 2 Facebook shares and 5 tweets.
- The State of Labor -- Now Take to the Streets, posted on November 3, 2010 with 840 words, 9 Facebook "Likes," 5 Facebook shares and 4 tweets.
- A Lack of Seriousness, posted on November 2, 2010 with 1,029 words, 3 Facebook "Likes," 2 Facebook shares, 21 tweets, and 1 comment.
- "The rich guys don't want to pay the tax", posted on November 1, 2010 with 556 words, 8 Facebook "Likes," 4 Facebook shares, 24 tweets, and 5 comments.
- The Mozilo Method: Rob, Get Caught, Cut Deal, Die Rich, posted on October 28, 2010 with 1,548 words, 3 Facebook shares, 19 tweets, and 6 comments.
- The Republican Economic Propaganda Fraud Will Give Us A Lost Decade, posted on October 27, 2010 with 720 words, 8 Facebook "Likes," 5 Facebook shares, 22 tweets, and 4 comments.
- The Madness of U.S. Arms Sales: Good Business, Bad For Planet, posted on September 29, 2010 with 938 words, 4 Facebook shares, 4 tweets, and 1 comment.



- A Worldwide Revolt Against Poverty Wages, , posted on August 19, 2010 with 506 words, 8 Facebook "Likes," 6 Facebook shares, 9 tweets, and 14 comments.
- U.S.Wages as Cheap as India, , posted on August 18, 2010 with 518 words, 12 Facebook shares, 13 tweets, and 14 comments.
- Charles Rangel, Step Aside for the Good of the Party, posted on July 22, 2010 with 302 words, 3 Facebook shares, 3 tweets, and 23 comments.
- Not a Dime More for Afghanistan, posted on May 24, 2010 with 296 words, 2 Facebook shares, and 2 comments.
- Democrats Must Reject Goldman Sachs-Wall Street Money, posted on April 19, 2010 with 546 words, 2 Facebook shares, and 4 comments.
- CEO Greed: "Worse This Year Than It's Ever Been", posted on April 1, 2010 with 711 words, 5 Facebook shares and 1 comment.
- A Super Bowl Ad Peyton Manning Should Do, posted on February 5, 2010 with 335 words, 5 Facebook shares and 3 comments.
- Wall Street Democrats vs. the People, posted on February 3, 2010 with 1,332 words, 5 Facebook shares and 4 comments.
- They Still Don't Get It--Wall Street May Sue Obama, posted on January 18, 2010 with 370 words, 24 Facebook shares and 9 comments.
- The Health Insurance Industry: The Greatest Debt Threat, posted on December 14, 2009 with 764 words.
- I Try To Eat Less: The Story Of The Economy, posted on October 2, 2009 with 424 words and 4 comments.
- Priorities: Afghanistan Versus Worker Pay Hikes, posted on September 1, 2009 with 780 words.
- Senator Baucus: "Uniquely American" Is Not an Answer, posted on August 5, 2009 with 824 words and 5 comments.
- Victory at Smithfields: An Independence Day Symbol, posted on July 3, 2009 with 674 words and 4 comments.
- Why Is Rush Limbaugh Attacking Me?, posted on June 24, 2009 with 161 words and 2 comments.
- Screw The Center, posted on June 22, 2009 with 380 words and 2 comments.
- NY Sen Primary: Take the Pledge For Open Debate! (w/video), posted on June 15, 2009 with 391 words and 1 comment.
- I'm Running for the U.S. Senate in NY -- Here's Why, posted on June 11, 2009 with 695 words and 19 comments.
- The Dallas Principles: The Best Response To Prop 8, posted on May 26, 2009 with 293 words and 6 comments.
- Yes, Maria Bartiromo, There Is Class Warfare, posted on May 25, 2009 with 649 words and 97 comments.
- Labor Must Field a Primary Opponent to Blanche Lincoln, posted on April 8, 2009 with 402 words and 3 comments.
- Democratic Senators: Mess With EFCA, Face A Primary, posted on March 10, 2009 with 1,447 words and 8 comments.
- The Financial Times: Capitalism Has Failed, posted on April 9, 2009 with 1,210 words and 6 comments.

- Memo To Business: Only Unions Will Save Your Bottom Line, posted on March 2, 2009 with 905 words and 10 comments.
- Mr. President, Don't Cave: NAFTA Isn't About "Free Trade", posted on February 19, 2009 with 888 words.
- The Greed Continues: \$121 Million For FOUR Merrill Execs, posted on February 11, 2009 with 697 words.
- The CEO Pay Caps Are A Mirage, posted on February 5, 2009 with 715 words and 6 comments.
- Banks Buying Both Parties To Get TARP Money--New Report, posted on February 4, 2009 with 462 words and 1 comment.
- A Demand: Banks Getting Our Money Can't Oppose Unions, posted on February 3, 2009 with 600 words and 8 comments.
- The Bigger Shame: The Rich Got Richer, posted on January 30, 2009 with 779 words and 2 comments.
- CEOs Boosting Their Pensions While Workers Pensions go Poof, posted on January 26, 2009 with 559 words and 26 comments.
- Gillibrand: Who Cares, Stop Whining, Organize!, posted on January 23, 2009 with 1,076 words and 1 comment.
- NY Senate 2010: A Primary Challenge Almost Certain, posted on January 16, 2009 with 1,423 words and 2 comments.
- Forget Social Security Taxes: Timothy Geithner, Robert Rubin and Citigroup, posted on January 15, 2009 with 919 words and 1 comment.
- Robert Rubin Gets His Pink Slip: Good Riddance, posted on January 10, 2009 with 693 words and 10 comments.
- A Choice: "Bi-Partisanship" Vs. Real Healthcare For Americans, posted on January 9, 2009 with 560 words and 11 comments.
- Cut Social Security, Don't Tax The Rich: Where Is The Outrage?, posted on January 8, 2009 with 560 words and 10 comments.
- President-Elect Obama, Tax The Rich To Keep Deficits Lower, posted on January 7, 2009 with 1,379 words and 16 comments.
- Conspiracy of Silence: Wage Collapse Caused Crisis, posted on January 6, 2009 with 666 words and 18 comments.
- Governor Paterson, Have You Lost Your Moral Compass?, posted on December 17, 2008 with 1,118 words and 1 comment.
- Blacking Out Single-Payer--And Killing The Auto Industry, posted on December 15, 2008 with 625 words and 4 comments.
- President-Elect Obama, Some "Unconventional" Economic Thinkers To Consider, posted on December 12, 2008 with 849 words and 4 comments.
- Boycott McDonald's: Every Big Mac Eaten Attacks Workers, posted on December 10, 2008 with 692 words and 21 comments.
- Robert Rubin: Coward or Liar -- or Both? , posted on November 29, 2008 with 1,457 words and 55 comments.
- AIG Pulls Fast One -- "Cash Awards" Going To Managers, posted on November 28, 2008 with 456 words and 246 comments.



- John Edwards for Labor Secretary, posted on November 24, 2008 with 2,249 words and 43 comments.
- You Got Screwed, CEOs Made a Fortune, posted on November 20, 2008 with 886 words and 15 comments.
- Big Media: Screw the Auto Workers, posted on November 19, 2008 with 922 words and 78 comments.
- It's Bozo The Clown's Fault, Not The "Free Market", posted on November 14, 2008 with 776 words and 50 comments.
- The Right Way To Bailout The Auto Industry, posted on November 12, 2008 with 1,172 words and 33 comments.
- We Have Plenty Of Money -- The Rich Are Killing Us, posted on November 11, 2008 with 802 words and 23 comments.
- How Your Tax Dollars Are Paying Bank Execs Billions, posted on October 31, 2008 with 925 words and 6 comments.
- We, The People, Should Run Freddie Mac and Fannie Mae, posted on September 11, 2008 with 499 words and 10 comments.
- Labor's Election Ground War -- And How The Media Is Missing It, posted on August 25, 2008 with 1,121 words and 1 comment.
- Is Joe Biden Good For Labor? Mostly, Yes., posted on August 23, 2008 with 1,640 words and 4 comments.
- Draft Copy of Democratic Party Platform, posted on August 7, 2008 with 1,719 words and 19 comments.
- Corporations Using WORKERS Money For CEO PENSIONS, posted on August 4, 2008 with 211 words and 3 comments.
- Why Are Democrats Taking Money From Wal-Mart?, posted on August 1, 2008 with 1,836 words and 4 comments.
- U.S. Businesses Hiding \$58 Billion of *Your* Money, posted on July 29, 2008 with 321 words and 2 comments.
- The Minimum Wage: A Disgrace and a Scandal, posted on July 24, 2008 with 1,196 words and 17 comments.
- The Rich Get Richer: Time for a Change, posted on July 23, 2008 with 574 words and 19 comments.
- Into The Abyss: Millions Face Old-Age With No Savings, posted on July 10, 2008 with 1,216 words.
- Paying Off Clinton's Debt: Not A Dime For Mark Penn, posted on July 9, 2008 with 1,003 words and 19 comments.
- War, The Economy And The Death of A Man, posted on June 30, 2008 with 925 words and 1 comment.
- BREAKING: Corporations Admit Trade Is About Lower Wages (Duh) , posted on June 18, 2008 with 607 words and 7 comments.
- Hillary's Demise Was All About Iraq, posted on May 23, 2008 with 701 words and 69 comments.
- Super Delegates Might Tip Over Trade, posted on May 1, 2008 with 581 words.
- Pandering on Energy: Clinton/McCain--Yes, Obama--No, posted on April 30, 2008 with 1,132 words and 45 comments.

- Jimmy Carter: Talking Can Lead to Peace, posted on April 28, 2008 with 737 words and 4 comments.
- On Passover: Thank You, Jimmy Carter, posted on April 21, 2008 with 840 words and 11 comments.
- Let Them Eat Cake: Now Here Are Real Elitists, posted on April 16, 2008 with 387 words and 5 comments.
- Will So-Called "Free Trade" Cost Republicans A Maine Senate Seat?, posted on April 9, 2008 with 426 words and 3 comments.
- The Elites Rally For So-Called "Free Trade", posted on April 8, 2008 with 1,262 words and 4 comments.
- General Electric: Killing Chinese Workers For A Cleaner Environment, posted on April 1, 2008 with 751 words and 12 comments.
- Sen. Clinton, You Want *Who* To Fix Our Economic Mess?, posted on March 25, 2008 with 1,438 words and 62 comments.
- Some Super-delegates Are Using Their Noggins, posted on March 7, 2008 with 461 words and 1 comment.
- A Super Delegate Strategy--With Content, On Trade, posted on March 4, 2008 with 639 words and 3 comments.
- Partisans, Get Real: Neither Clinton or Bad Good on Trade, posted on February 28, 2008 with 745 words and 15 comments.
- What Will Labor Do with Edwards Out of the Race?, posted on January 31, 2008 with 1,029 words and 7 comments.
- Edwards – The Al Gore of Economic Struggle, posted on January 30, 2008 with 333 words and 21 comments.
- WAL-MART: Recession Ambulance Chasers, posted on January 29, 2008 with 426 words and 4 comments.
- Is CEO Greed Waning? Just a Little – And Not By Choice, posted on January 28, 2008 with 860 words and 3 comments.
- The WAL-MART Divide-And-Conquer Strategy, posted on January 25, 2008 with 804 words and 15 comments.
- Is Michael Cieply the Worst Reporter Ever?, posted on January 24, 2008 with 1,650 words and 5 comments.
- The Directors Guild Deal: Good or Bad? First Analysis, posted on January 18, 2008 with 1,790 words and 3 comments.
- How Can Labor People Hurt the Writers Strike?, posted on January 9, 2008 with 1,162 words and 6 comments.
- We Are Winning on Trade – Pick Your Candidate, posted on December 28, 2007 with 3,403 words and 4 comments.
- John Edwards's Closing Argument – And Why the Media Doesn't Get It, posted on December 19, 2007 with 686 words and 44 comments.
- Victoria's Secret, Slave Labor and So-Called "Free Trade," posted on November 27, 2007 with 1,028 words, 2 e-mailed and 19 comments.
- How Big Media Breaks the Law on "Survivor" Island, posted on November 26, 2007 with 1,072 words and 9 comments.

- Iowans Think John Edwards is Right on Trade, posted on November 21, 2007 with 683 words and 16 comments.
- Memo to Sen. Obama and Other Dems: There is No Social Security Crisis, posted on November 15, 2007 with 542 words and 8 comments.
- Are Democrats Blowing A Chance in a Generation on Trade, posted on November 9, 2007 with 1,518 words and 14 comments.
- Greed is Good: How Big Media Wants to Steal from its Workers, posted on November 1, 2007 with 1,021 words and 8 comments.
- The Great Retraining Lie, posted on October 31, 2007 with 1,117 words and 16 comments.
- Will Democrats Follow John Edwards on Trade and Win Elections?, posted on October 29, 2007 with 1,262 words and 49 comments.
- Remembering Paul Wellstone – Our Collective Loss Five Years Ago, posted on October 25, 2007 with 1,522 words, 1 e-mailed and 15 comments.
- George Bush and the Lies About the Economy, posted on October 12, 2007 with 1,268 words and 9 comments.
- Labor's Choice for President (Part IV): SEIU Netutral, posted on October 9, 2007 with 779 words and 2 comments.
- Democratic Golden Opportunity: Republican Voters Oppose "Free Trade," posted on October 5, 2007 with 953 words and 30 comments.
- Democrats Can't Capitulate on Economic Fairness, Either, posted on September 7, 2007 with 1,455 words and 13 comments.
- The Plan to Protect Homeowners, Not Hedge Funds, posted on August 2, 2007 with 521 words and 15 comments.
- Danger from China: Thanks Milton Friedman and the New York Times, posted on August 16, 2007 with 746 words and 19 comments.
- Guns Versus Butter – Our Real Economic Challenge, posted on August 13, 2007 with 1,393 words and 12 comments.
- Major Unions Set to Endorse – But Will They?, posted on August 7, 2007 with 1,083 words and 5 comments.
- John Edwards – On Trade, Leading the Way Again, posted on August 6, 2007 with 1,177 words and 5 comments.
- Edwards Driving Democratic Party Debate – WSJ Admits, posted on July 20, 2007 with 904 words and 8 comments.
- Why Some Democrats Can't be Trusted on Trade, posted on July 18, 2007 with 1,212 words and 2 comments.
- Does Tom Friedman Have a Clue About China? No., posted on July 17, 2007 with 593 words and 4 comments.
- Bar the Doors! The Protectionists Are Coming!, posted on July 8, 2007 with 474 words and 16 comments.
- CEOs Panic on Trade – But They Are Organizing the Counter-Attack, posted on July 6, 2007 with 2,035 words and 8 comments.
- Hillary Clinton Opposes South Korea "Free Trade," posted on June 11, 2007 with 539 words and 2 comments.

- Single-Payer Health = Reduced Global Warming, posted on June 8, 2007 with 562 words and 4 comments.
- Beating Up Nannies: The Unseen Abuse of Domestic Workers, posted on June 1, 2007 with 1,362 words and 3 comments.
- The World Bank: From Bad to Worse, posted on May 30, 2007 with 606 words and 5 comments.
- MSM Discovers: Globalization Creates Inequality - Duh, posted on May 24, 2007 with 1,057 words and 6 comments.
- Chrysler: Single-Payer Health Care, CEO Pay?, posted on May 15, 2007 with 799 words and 6 comments.
- Paul Krugman Gets it Wrong on Trade - Sadly, posted on May 14, 2007 with 1,356 and 5 comments.
- Wolfowitz's "Greed is Good" Defense, posted on May 1, 2007 with 449 words and 7 comments.
- The Coming Attack Against Auto Workers - And You, posted on April 25, 2007 with 1,158 words and 9 comments.
- Are There Four Anti-Union Democratic Senators?, posted on April 19, 2007 with 844 words and 8 comments.
- Wal-Mart Stock to be Dumped by the Norwegian Government, posted on April 6, 2007 with 1,215 words and 3 comments.
- How CEOs are Robbing America - And Enriching Themselves, posted on April 3, 2007 with 1,791 words and 17 comments.
- GDP Up, But Class Warfare Continues, posted on March 29, 2007 with 511 words and 16 comments.
- No More Blank Checks: Vote No on Iraq War Money, posted on March 20, 2007 with 463 words and 6 comments.
- "60 Minutes": Anti-Union or Just Dumb?, posted on March 12, 2007 with 1,405 words and 6 comments.
- The End of So-Called "Free Trade," posted on March 9, 2007 with 913 word and 5 comments.
- Charles Rangel, Don't Make Bad Deals on "Free Trade," posted on March 6, 2007 with 1,055 words and 1 comment.
- The Candidate Labor Should Support for President, posted on March 5, 2007 with 1,678 words and 18 comments.
- Republicans Admit: Labor Rights in the U.S. the Worst, posted on March 1, 2007 with 736 words and 9 comments.
- Baseball Disses Marvin Miller Again, posted on February 27, 2007 with 497 words and 2 comments.
- U.S. "Free Trade": Death, Drugs and Dispair in Colombia, posted on February 22, 2007 with 2,551 words and 6 comments.
- The New York Times; More Lies About the Economy, posted on February 16, 2007 with 1,022 words and 21 comments.
- Will a New Labor-Business Alliance Solve Health Care Crisis?, posted on February 7, 2007 with 799 words and 4 comments.

- The New York Times Shills for Corporate Trade, posted on February 2, 2007 with 1,280 words and 7 comments.
- Breaking: McGovern's End the Occupation Legislation, posted on January 31, 2007 with 1,160 words and 5 comments.
- Democrats Should Make Bush Pay Big for War-Funding, posted on January 30, 2007 with 421 words and 17 comments.
- Hillary Clinton Lied to Keith Olberman, posted on January 25, 2007 with 724 words and 41 comments.
- Why Were Democrats Applauding?, posted on January 24, 2007 with 837 words and 45 comments.
- Progressives Introduce End the War Legislation, posted on January 17, 2007 with 330 words and 6 comments.
- The New Republican Raid on the Treasury, posted on January 11, 2007 with 654 words and 8 comments.
- Why Does Charlie Rangel Want to Coddle the Rich?, posted on January 8, 2007 with 521 words and 5 comments.
- Do Democrats Have the Courage to Buck the "Free Market?", posted on January 2, 2007 with 1,848 words and 5 comments.
- Ford Prolonged Our Nightmare, Impeaching Bush Will Heal Our Nation, posted on December 29, 2006 with 979 words and 21 comments.
- Goldman Sachs, Can You Spare Some Workers a Couple of Billion, posted on December 19, 2006 with 671 words and 10 comments.
- The Education Lie Part II: The Fields of Dreams of Economic Theory, posted on December 15, 2006 with 912 words and 19 comments.
- Goldman Sachs Owes You Money, posted on December 14, 2006 with 749 words and 4 comments.
- The Great Lie: Education Will Save Us, posted on December 13, 2006 with 796 words and 50 comments.
- Fool's Gold: Raising the Minimum Wage, posted on December 7, 2006 with 663 word and 22 comments.
- Democrats: Get at Real Economic Agenda or Become the Minority Party Again, posted on December 5, 2006 with 1,600 words and 19 comments.
- The Dawn of the Next Corporate Crime Wave, posted on December 1, 2006 with 604 words and 5 comments.
- Greed is Good is Back, posted on November 10, 2006 with 401 words and 13 comments.
- The End of So-Called "Free Trade" Has Arrived, posted on November 8, 2006 with 673 words and 14 comments.
- "Why Aren't Democrats Embracing the Word 'Union'?", posted on November 7, 2006 with 748 words and 14 comments.
- Cut-Off War Funding: We Have the Power, posted on November 2, 2006 with 457 with 15 comments.
- Do Democrats Know the System is Broken?, posted on October 30, 2006 with 773 words and 26 comments.



- Remembering Paul Wellstone, posted on October 25, 2006 with 810 words and 25 comments.
- Nancy Pelosi, Stop Drinking at the K Street Trough, posted on October 23, 2006 with 493 words and 11 comments.
- Health Care Crisis? Your Fault, posted on October 18, 2006 with 384 words and 7 comments.
- Corporations Working Hard to Keep Chinese Slave Labor, posted on October 13, 2006 with 80 words and 15 comments.
- Lou Dobbs Versus Robert Reich: Who's the Corporate Shill?, posted on October 11, 2006 with 1,012 word and 36 comments.
- Lieberman is No Friend of Israel, posted on October 6, 2006 with 690 words and 29 comments.
- How Bush Just Screwed 8 Million Workers, posted on October 3, 2006 with 680 words and 3 comments.
- A November 8<sup>th</sup> Coalition: Take Back Our Country, posted on September 29, 2006 with 484 words and 21 comments.
- Dems and Lobbyists, posted on September 27, 2006 with 597 words and 2 comments.
- Hillary is Finished If. . ., posted on September 18, 2006 with 805 words and 15 comments.
- Hillary: Cluster Bombs Are Not Village- Friendly, posted on September 8, 2006 with 297 words and 7 comments.
- MoveOn Rank-And-File Votes in Large Numbers to Dump Hillary, posted on April 5, 2006 with 448 words and 22 comments.
- MoveOn Polling in Hillary Race, posted on August 31, 2006 with 197 words and 38 comments.
- Hillary is Making Us All Sicker, posted on August 24, 2006 with 534 words and 10 comments.
- Hillary, Thanks for Raising Our Taxes, posted on August 23, 2006 with 458 words and 11 comments.
- The Times and NY Post Agree: Hillary, Stop Hiding, posted on August 21, 2006 with 3187 words with 27 comments.
- How Big Media Censors Political Debate, posted on August 3, 2006 with 1,078 words and 14 comments.
- The Children of Qana and Our Politicians Culpability, posted on August 1, 2006 with 804 words and 9 comments.
- The DLC Won't Talk About Corporate Power, posted on July 25, 2006 with 1,078 words and 31 comments.
- First Joe, Now Voters Ready to Reject Hillary Over War, posted on July 21, 2006 with 735 words and 18 comments.
- Exposing the Clinton Charade (Part 1), posted on July 26, 2006 with 1,580 words and 31 comments.
- When It Comes to Sucking Up to Power, Progressives Are Censors, Too, posted on June 14, 2006 with 849 words and 10 comments.
- Zogby Says: Hillary Clinton Can Lose Re-Election, posted on June 2, 2006 with 564 word and 70 comments.



- Immigration, posted on April 13, 2006 with 567 words and 17 comments.
- Where is the Soul of the Democratic Party, posted on April 1, 2006 with 258 words and 22 comments.
- Why Jews Must Speak Up on Palestine, posted on March 24, 2006 with 1,102 words and 52 comments.
- Welfare "Reform": The NY Times Perpetuates a Myth, posted on March 20, 2006 with 658 words and 5 comments.
- Democrats Shilling for Wal-Mart, posted on March 3, 2006 with 515 words and 14 comments.
- Will the Troops Give Democrats Some Spine?, posted on February 28, 2006 with 588 words and 27 comments.
- Sen. Coburn, Ask the Rich to Sacrifice First, posted on February 13, 2006 with 522 words and 6 comments.
- Raising the Peoples' Expectations, posted on February 10, 2006 with 627 words and 14 comments.
- Hillary and Wal-Mart: A Love Story, posted on February 7, 2006 with 507 words and 31 comments.
- Democrats Blowing It Again, posted on February 1, 2006 with 540 words and 8 comments.
- Real Corruption, posted on January 27, 2006 with 537 words and 6 comments.
- Fire Rumsfeld, posted on January 11, 2006 with 181 words and 42 comments.
- Hillary Panders Again, posted on December 7, 2005 with 365 words and 32 comments.
- Why I'm Running Against Hillary, posted on December 5, 2005 with 769 words and 62 comments.

20. Tasini worked, on average, between one and ten hours on each of the above pieces of content provided to TheHuffingtonPost.com.

21. Despite the fact that the 216 pieces of content listed above generated revenue for TheHuffingtonPost.com, Tasini has never been compensated by TheHuffingtonPost.com.

22. TheHuffingtonPost.com encouraged Tasini to circulate hyperlinks to the content he provided to TheHuffingtonPost.com through his social networking media to his over 4,000 Facebook "friends," hundreds of Twitter "followers" and his email list containing in excess of 10,000 addresses, which he did. Tasini's efforts to publicize his work drew substantial internet traffic to TheHuffingtonPost.com.

23. At the time of the Merger (as defined below), upon information and belief, approximately 9,000 unpaid content providers, like Tasini, had been (and continue to be) selected to provide content to TheHuffingtonPost.com. The approximate 9,000 other unpaid content providers, like Tasini, regularly advised their contacts through social networking media of their valuable content provided to TheHuffingtonPost.com, driving internet traffic to TheHuffingtonPost.com.

### **DEFENDANTS**

24. Defendant AOL is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in the County of New York in the State of New York at 770 Broadway, New York, NY 10003.

25. Defendant TheHuffingtonPost.com is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the County of New York in the State of New York at 560 Broadway, Suite 308, New York, NY 10012.

26. Upon information and belief, Defendant Arianna Huffington ("Huffington") is an individual with a residence in the County of New York in the State of New York and in the State of California.

27. Upon information and belief, Defendant Kenneth Lerer ("Lerer") is an individual with a residence in the County of New York in the State of New York.

28. AOL, TheHuffingtonPost.com, Huffington and Lerer shall be collectively referred to herein as the "Defendants" where the context merits. Whenever in this Complaint reference is made to any act, deed, or transaction of the Defendants, the allegation means that the Defendants engaged in the act, deed, or transaction, either individually, or by or through their partners, officers, directors, agents, employees, or representatives, as the case may be, while they were

actively engaged in the management, direction, control or transaction of TheHuffingtonPost.com's business or affairs.

### **JURISDICTION AND VENUE**

29. Subject matter jurisdiction of this Court is appropriate under the Class Action Fairness Act of 2005 and 28 U.S.C. 1332(d)(2)(A) because:

- a. The amount in controversy exceeds \$5,000,000, exclusive of interests and costs;
- b. At least one of the Plaintiffs is a citizen of a state different than any one Defendant;
- c. Greater than one-third (1/3) of the members of the Class reside outside the State of New York.

30. The estimate that aggregate damages in this matter exceeds \$5 million is based on current information regarding the value created by the content and services provided by Plaintiff and the Classes to Defendants. Plaintiff and the Classes have created content worth at least \$105 million to Defendants that should be returned to Plaintiff and the Classes as content creators.

31. Venue is properly laid in the Southern District of New York because Defendants reside, are found, have agents and transact business in this District pursuant to 28 U.S.C. §1391. Defendants have all transacted business in New York County, State of New York, many of the services provided by Plaintiff and the Classes were in New York County, State of New York, and Defendants either reside or have principal places of business in New York County, State of New York. In addition, the transactions or occurrences which comprise this action occurred in the County of New York, State of New York.

32. This Court has personal jurisdiction over the Defendants because, *inter alia*, Rule 4 of the Federal Rules of Civil Procedure where under New York law, Defendants have all transacted business in New York County, State of New York, many of the services provided by Plaintiff and the Classes were in New York County, State of New York, and Defendants either reside or have places of business in New York County, State of New York

33. Finally, the “Terms of Use” for TheHuffingtonPost.com states “Any dispute between us will be governed by New York law.”

### **CLASS ACTION ALLEGATIONS**

34. Plaintiff brings this action as a class action under Federal Rules of Civil Procedure 23(b)(2) and (b)(3) on his own behalf and on behalf of the following two described classes (the “Classes”):

The “Declaratory and Injunctive Relief Class”:

All current and former unpaid content providers to TheHuffingtonPost.com residing in the United States and Canada and who did not and continue not to receive any compensation related thereto. This class does not include employees of TheHuffingtonPost.com or partners or employees of Kurzon Strauss LLP.

The “Damages Class”:

All current and former unpaid content providers to TheHuffingtonPost.com residing in the United States and Canada and who did not receive and continue not to receive any compensation related thereto during the period of three years preceding this Complaint for the claims of Count 1- Deceptive Business Practice, and Count 2 – Unjust Enrichment or for such longer period as this Court finds to be equitable and just given the circumstances. This class does not include employees of TheHuffingtonPost.com or members or partners of Kurzon Strauss LLP.

35. Members of the Damages and Declaratory and Injunctive Relief Classes are collectively referred to herein as the “Classes” unless otherwise individually specified.

36. Plaintiff and the Classes do not know the exact number of the Classes' members, because that information is in the exclusive control of Defendants. However, based on public reports, Plaintiff and the Classes believe that the Classes' members number approximately 9,000 and are geographically diverse so that joinder of all the Classes' members is impracticable. The Classes members are residents of most, if not all, of the fifty States of the United States, the District of Columbia, and Canada.

37. There are questions of law or fact common to members of the Damages Class, including but not limited to the following:

- a. Whether Defendants recognized revenue and profit from the services provided by Plaintiff and the Damages Class;
- b. Whether Defendants have been unjustly enriched by the services provided by Plaintiff and the Damages Class;
- c. Whether Defendants are responsible for compensating Plaintiff and the Damages Class at common law under a claim of unjust enrichment;
- d. Whether Defendants engaged in deceptive business practices under New York law in procuring services from the Plaintiff and the Damages Class;

38. With respect to the Declaratory Relief and Injunctive Relief Class, common questions of law or fact include the following:

- a. Whether Defendants should be permitted to continue to recognize revenue and profit from the services provided by Plaintiff and the Declaratory and Injunctive Relief Class;
- b. Whether Defendants continue to be unjustly enriched;

- a. Whether Defendants are responsible for compensating Plaintiff and the Declaratory and Injunctive Relief Class at common law under a claim of unjust enrichment;
- c. Whether injunctive relief is appropriate;
- d. If injunctive relief is appropriate, what types of such relief are suitable in this matter and;
- e. Whether a constructive trust for the benefit of the Declaratory and Injunctive Relief Class should be established.

39. With respect to the members of the Declaratory and Injunctive Relief Class, as further set forth below, Defendants have continued to derive revenue and profit from the services provided by the Declaratory and Injunctive Relief Class without providing any compensation to Plaintiff and the Declaratory and Injunctive Relief Class.

40. Plaintiff's claims are typical of, and not antagonistic to the claims of the Classes' members. By advancing his claims, Plaintiff will also advance the claims of all the Classes' members, because Defendants participated in activity that caused all the Classes' members to suffer similar injuries.

41. Plaintiff and his counsel will fairly and adequately protect the interests of the Classes' members who are absent. There are no material conflicts between Plaintiff's claims and those of the Classes' members who are absent that would make class certification inappropriate. Counsel for Plaintiff and the Classes are experienced in complex class action litigation, including matters with respect to common law and trade, and will vigorously assert Plaintiff's claims and those of the Classes' members who are absent.



42. A class action is superior to other methods for the fair and efficient resolution of this controversy. The class action method of dispute resolution presents fewer management difficulties, and provides the benefit of single adjudication, economy of scale, and comprehensive supervision by a single court. The damages suffered by Plaintiff and each of the members of the Damages Class are relatively small as compared to the expense and burden of individual prosecution of the claims asserted in this litigation. Thus, absent class certification, it would not be feasible for Plaintiff and the members of the Damages Classes to redress the wrongs done to them.

43. It would also be grossly inefficient for the judicial system to preside over large numbers of individual cases. Further, litigation presents the potential for inconsistent or contradictory judgments and would greatly magnify the delay and expense to all parties and to the judicial system. Therefore, the class action method of dispute resolution presents far fewer case management difficulties and will provide the benefits of unitary adjudication, economy of scale and supervision by a single court.

### **FACTUAL ALLEGATIONS**

#### **ABOUT THEHUFFINGTONPOST.COM**

44. TheHuffingtonPost.com launched on May 9, 2005 as a for-profit enterprise.

45. Upon information and belief, TheHuffingtonPost.com was a website created by Huffington and Lerer.<sup>1</sup>

46. TheHuffingtonPost.com is in the business of selling advertising targeted toward visitors to the website [www.huffingtonpost.com](http://www.huffingtonpost.com) and its sub-sites. TheHuffingtonPost.com

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<sup>1</sup> An action currently pending in New York State Supreme Court, New York County, alleges that there were additional founders of TheHuffingtonPost.com. Those individuals alleged to be co-founders are not defendants in this complaint, but Plaintiff and the Classes reserve their right to amend this complaint to include those individuals as defendants.

attracts visitors though its presentation of content, much of it created by Plaintiff and the Classes. As set forth below, although TheHuffingtonPost.com realizes significant revenues from advertising sales to viewers of content provided by Plaintiff and the Classes, TheHuffingtonPost.com does not provide any compensation to Plaintiff and the Classes.

47. As of January, 2011, TheHuffingtonPost.com received more than 26 million unique visitors per month.

48. Despite being aware for some time that the content provided by Plaintiff and the Classes was producing substantial revenue for TheHuffingtonPost.com, Defendants have refused to provide any compensation. As early as September 2007, Lerer stated that TheHuffingtonPost.com has no plans to pay its content providers and stated, "That's not our financial model...we offer them visibility, promotion and distribution."

49. Upon information and belief, TheHuffingtonPost.com, despite promoting itself as a forum for ideas and news, always intended to derive revenues from the content provided by, and at the expense of, Plaintiff and the Classes.

50. TheHuffingtonPost.com is generally regarded as a progressive media source and Defendant Arianna Huffington's statements indicate her own belief that the creators of content should be fairly compensated for the value provided.

51. For example, in her book "Third World America" (Crown, 2010), Ms. Huffington notes that whereas forty-years ago CEOs made, on average, thirty times what their workers did, CEO's now they make 300 times what their workers make. Ms. Huffington then states:

This two-tier economy comes with two sets of rules – one for the corporate class and another for the middle class.

The middle class, by and large, plays by the rules, then watches as its jobs disappear. The corporate class games the system – making sure its license to break the rules is built into the rules themselves.

(pages 55 and 56)

52. Towards the conclusion of “Third World America,” Ms. Huffington writes that to avoid a “Third World America,” she believes the nation needs to make certain it is “a place where economic opportunity is once again real for everyone, not just the economic elite” and “a place where greed and selfishness are no longer rewarded and the ‘least among us’ are given a helping hand, rather than the back of it.” (page 237).

53. Despite these proclamations, by failing to compensate Plaintiff and the Classes’ for the valuable content provided to the TheHuffingtonPost.com, content from which TheHuffingtonPost.com recognized, and continues to recognize, revenue, Ms. Huffington is exacerbating the very inequalities she seeks to redress.

#### THE HUFFINGTONPOST.COM’S UNPAID CONTENT PROVIDERS

##### **Content Providers Are Selected Based on Their Ability to Drive Traffic to TheHuffingtonPost.com**

54. Unlike social networking internet platforms, micro-blogging internet sites, and other digital media sites, such as TheDailyKos.com, TheHuffingtonPost.com selects its content providers and does not allow content from non-vetted providers.

55. Although the TheHuffingtonPost.com’s selection criteria is not generally known, upon information and belief, the criteria is based on, among other things, the ability of the content provider to drive internet traffic to TheHuffingtonPost.com and thereby create revenue for the TheHuffingtonPost.com.

56. Plaintiff and the Classes were not officious contributors to the TheHuffingtonPost.com and, rather, were carefully selected, and in some cases recruited, by TheHuffingtonPost.com to perform services for it.

57. Upon information and belief, the vast majority of the Classes' members, like Plaintiff, are quasi-professional writers, meaning that they occasionally earn fees for their writing, but it was not their principal occupation. Approximately half of the Classes' members are professional journalists and, moreover, approximately half of the Classes' members are published authors. In sum, the content provided by Plaintiff and the Classes to TheHuffingtonPost.com is of the highest quality, and selected by TheHuffingtonPost.com for that very reason.

58. Upon information and belief, TheHuffingtonPost.com rejected a great number of content providers, only accepting high quality content from the Plaintiff and the Classes based on the ability of Plaintiff and the Classes to drive internet traffic to TheHuffingtonPost.com.

59. Moreover, upon information and belief, the valuable content provided by Plaintiff and the Classes are accessible from the TheHuffingtonPost.com in perpetuity.

**Unpaid Content Providers, Such as Plaintiff and the Classes, Lower the Cost of Production for TheHuffingtonPost.com**

60. By selecting and soliciting top quality content from Plaintiff and the Classes without providing any compensation to Plaintiff and the Classes, TheHuffingtonPost.com was able to produce content at an extremely low cost, therefore being further enriched by the content provided by Plaintiff and the Classes.

61. Upon information and belief, a large part of the success of TheHuffingtonPost.com is due to the high quality of the content provided by Plaintiff and the Classes at no cost, which created, and continues to create, real value to Defendants by, *inter alia* reducing the cost of content production and driving internet traffic to TheHuffingtonPost.com.

62. Executives of AOL noted that \$20 million in "cost savings" would be recognized by AOL due to TheHuffingtonPost.com's history of not compensating Plaintiff and the Classes

for high quality content. For example, in a February 7, 2011 conference call announcing AOL's merger with TheHuffingtonPost.com, AOL's Chief Financial Officer Artie Minson stated:

Even in a stand-alone basis, we think this is a very good deal for us financially. Second, the added benefit of this deal is the cost savings opportunities. As you know, one of the stated goals we've had at AOL is to produce high-quality content profitably. Certain areas, we've been losing money and we've told you of our intent to reverse that through cost cuts, M&A or partnerships with third parties. [...] There are a number of areas where AOL and the Huffington Post's content overlap. [...] While we believe there are \$20 million of cost savings, there shouldn't be change in your models to your 2011 [...] estimates.

63. Not to be left out, on that same conference call, Ms. Huffington addressed the value provided by Plaintiff and the Classes who, presumably, were expected to continue to provide top quality content at no cost to Defendants:

In terms of content strategy, one of the things that was done well at TheHuffingtonPost.com is to produce high-quality content in cost-effective ways.

64. The value Plaintiff and the Classes provided to Defendants is further demonstrated by a document leaked from AOL, entitled "The AOL Way – Content, Product, Media Engineering, and Revenue Management," which was created one week before AOL acquired TheHuffingtonPost.com. In "The AOL Way", AOL acknowledges that:

- a. AOL employs technology to track the cost of each piece of content and the revenue generated by each piece of content to determine profitability for each post (page 11). Upon information and belief, TheHuffingtonPost.com employs similar technology;
- b. Profitability decreases as the cost of production of content increases. For example, "vetted freelancers" (such as Plaintiff and the Classes) come at a high cost (as AOL previously paid its freelancers), but the use of vetted freelancers such as Plaintiff and the Classes not only creates top quality content but also disseminates

the content created over social network media and other media, yielding “Search Engine Optimization” (“SEO”), which leads to higher search rank, more comments, more page views (PVs), internet traffic and therefore profitability (page 14);

- c. Content creators such as Plaintiff and the Classes, through self-promotion and their own social following, among other things, bring external internet traffic to AOL websites and increase page views (page 36);
- d. Freelancers, (such as Plaintiff and the Classes) since they are expensive, should only be used sparingly because of the associated cost (page 19);
- e. AOL’s “Scaled Content Creation Process” requires it to identify profitable content creation opportunities, such as where it can generate top quality content for the lowest cost possible.

65. The Credit Suisse Media Daily summed up the “AOL way” on February 8, 2011 as follows: “A terrifying leaked document entitled ‘The AOL Way’ pinged round the US media business last week containing the company’s “secret sauce” for success in creating journalism for the internet. Quintessentially that seemed to be increasing the number of pieces writers produced, for less money. ‘Scaled content production’ is the rather sobering term for this.”

66. On April 7, 2011, an editor at AOL wrote to recently terminated paid content providers encouraging them to provide content for free in the future, an example of the implementation of AOL’s strategy.

67. Therefore, upon information and belief, TheHuffingtonPost.com was an attractive merger target for AOL because of TheHuffingtonPost.com’s ability to obtain high quality content from Plaintiff and the Classes at no cost.



68. In an article in CNNMoney.com, published on February 2, 2011, the author sampled the content sought by AOL and the prices offered for creators of such content:

The quality of content is a partly subjective assessment, of course. But here's a sampling of the Stories Seed is currently offering to freelancers: "Parents at Justin Bieber Concerts (photos)," "Confessions of a Greeting Card Writer," and "Why I love to Dress My Body." That last one, which would be published in AOL's StyleList site, pays \$50. Meanwhile, "Backpacking the Axis of Evil," due in five days, pay \$10 for 1,000 words. Most assignments range between \$10 and \$25. [ . . . ] AOL is not only switching from one business to another, but it is spending big on content creation and a nationwide local strategy, as well as actual newsgathering operations.

69. Upon information and belief, AOL only offers to pay amounts for content which are less than the revenue potentially earned from that content. In other words, at AOL, content creators are paid an amount only because AOL is able to realize revenue *in excess* of the amount paid for content creation. Therefore, upon information and belief, after merging with TheHuffingtonPost.com, Defendants' profits will increase because of their ability to obtain higher quality content at no cost due to TheHuffingtonPost.com's refusal to compensate content creators such as Plaintiff and the Class. Indeed, upon information and belief, AOL has already terminated, or stopped soliciting content from, paid content creators in favor of unpaid content creators, such as Plaintiff and the Class.

70. Finally, by making Plaintiff and the Classes responsible for "the consequences of posting or publishing" content, TheHuffingtonPost.com's Terms and Conditions place all downside risk with Plaintiff and the Classes, but all the benefits from the content, i.e. the revenue derived, with Defendants.

71. In sum, by eliminating all costs associated with content production and placing those costs with Plaintiff and the Classes, Defendants are being unjustly enriched.

**Plaintiff and the Classes Drive Traffic to The HuffingtonPost.com**

72. In addition to providing high quality content for TheHuffingtonPost.com, Plaintiff and the Classes were also asked to, and did, drive internet traffic to TheHuffingtonPost.com by alerting their electronic mail contacts of the content provided and using social networking media. Such efforts were specially solicited by TheHuffingtonPost.com.

73. For example, as of March 31, 2010, and, upon information and belief, earlier, TheHuffingtonPost.com posted on their website and sent to Plaintiff and the Classes by electronic mail a document entitled "Huffpost Blogging Guidelines, Tips, FAQ." The document contained the following guidelines for Plaintiff and the Classes (all emphasis in original):

We encourage contributors to promote their pieces and send them around – many readers arrive at pieces on TheHuffingtonPost.com via links passed on from friends and other sites. Here are a couple of ideas:

- **Email Lists:** Send a short note with a link to your post to any lists you're on – whether social organizations, extracurricular groups, or even just your typical family/friends list. Encourage them to comment! Our experience shows that often the more comments a post attracts, the better it does in generating clicks and more comments. Create a community around your post, and help it grow by starting with your own personal community. Encourage your friends to share it as well.

- **Facebook/MySpace:** Share your post via Facebook or Myspace! Facebook makes it especially easy to share links through what they call "Posted Items." Click here: <http://www.facebook.com/posted.php> and paste your permalink into the box titled Post a Link. If it all goes well, your profile will say that you've "shared a blog post" and should even include your HuffPost headshot.

- **Blogs that cover the topic you're writing about:** Most blogs will have a 'contact' electronic mail for their proprietor. If you've written something you think a specific blog might be interested in, send it their way with a brief, polite note explaining why you thought they might find it interesting (don't send them everything you write, and don't send to multiple blogs simultaneously, i.e., 'spam' them). It also doesn't hurt to reference individual posts that they've written in your posts, by linking to them.

- **Respond to Comments:** Responding to comments on your own post helps the community grow around it. Your comments will have a special badge next to them to note your affiliation with the site as a "HuffPost blogger" –

simply make sure you are logged in to the backstage area where you first submitted your post, then proceed to huffingpost.com to write your comment.

- **Friends = Fans:** Encourage your friends to become your “fan” on Huffington Post, by proceeding to any post of yours on the site and clicking the link that reads, “Become a Fan.” After doing so, they will automatically get an electronic mail letting them know when you’ve published something.

74. Upon information and belief, Defendants give preference to content providers who have large networks of followers so as to optimize the revenue generated by those content providers.

**Acknowledging That Plaintiff and the Classes Deserve Compensation, TheHuffingtonPost.com Offers Only “Exposure” And, if Any is Provided, in Unknown Quantities**

75. On several occasions TheHuffingtonPost.com publicly stated that value was being provided by Plaintiff and the Classes.

76. For example, on February 7, 2011 Ms. Huffington sent Plaintiff and the Classes electronic mail stating “Our bloggers have always been a very big part of who we are. . . [and] . . . Thank you for being such a vital part of the HuffPost family.”

77. Despite the value provided, Plaintiff and the Class were only offered “exposure.”

78. Moreover, upon information and belief, although Plaintiff and the Classes were promised “exposure” from their posts and many did, in fact, receive exposure, it was TheHuffingtonPost.com that realized real value from the content provided by Plaintiff and the Classes and the exposure they brought to TheHuffingtonPost.com.

79. As TheHuffingtonPost.com grew, and additional members of the Classes’ provided content, the amount of exposure provided to any one Class member decreased, substantially, while the revenue generated by TheHuffingtonPost.com continued to grow.

Nevertheless, Plaintiff and the Classes were never notified of the decreasing amount of exposure and continued to provide content to TheHuffingtonPost.com.

80. If it were not for the labor of Plaintiff and the thousands of unpaid Class members on and for TheHuffingtonPost.com, each of whom helped make TheHuffingtonPost.com a household name, TheHuffingtonPost.com would not have been an attractive merger target and would have sold for at least \$105 million less than the merger price of \$315 million.

REVENUES DERIVED BY DEFENDANTS FROM PLAINTIFF AND THE CLASSES

81. There are numerous revenue streams recognized from digital media sites such as TheHuffingtonPost.com, the principal one being online advertising revenue. Online advertising revenues increase in proportion to the amount of internet traffic and the quality of the content appearing on a digital media site.

82. Upon information and belief, TheHuffingtonPost.com tracked content costs and revenues and profits from each piece of content provided Plaintiff and the Classes. However, such information was never shared with Plaintiff and the Classes and Plaintiff and the Classes were affirmatively misled regarding the availability of such information.

83. According to Quantcast, a service that provides website internet traffic data, TheHuffingtonPost.com has recently received 15.6 million page views per weekday.

84. TheHuffingtonPost.com publishes approximately 600 to 700 pieces of content a day. Although some of this content is produced by paid content providers and some are links to other digital media sources, many of the pieces are original content provided by Plaintiff and the Classes.

85. Because of the system set up by TheHuffingtonPost.com, Plaintiff and the Classes gave the Defendants more exposure than vice-versa, namely, Plaintiff and the Classes typically

shared the link to the content provided with their social networks, sharing via electronic mail, Facebook, Twitter and the like (as so encouraged and directed by TheHuffingtonPost.com) – driving internet traffic to the HuffingtonPost.com and creating value for the Defendants.

86. Furthermore, based on search engine algorithms, the original content provided by the Plaintiff and the Classes is especially valuable because original content allows for “search engine optimization.”

87. TheHuffingtonPost.com is aware of the search optimization potential of original content and seeks to maximize revenues from such content.

88. Based on public reports, almost fifty percent (50%) of visitors to TheHuffingtonPost.com only view one page, which, upon information and belief, is likely to be the page they were directed to by Plaintiff or the Classes through social networking media or electronic mail. Published reports also indicate that the most popular section of TheHuffingtonPost.com is the “blog” section. However, TheHuffingtonPost.com also realizes substantial revenue from advertising viewed from its links to content created by other media companies’ paid contributors.

89. Upon information and belief, the “blog section” attracts the most page views due, in part, to the efforts of Plaintiff and the Classes to advise their contacts through social networking media or electronic mail of the valuable content Plaintiff and the Classes provided to TheHuffingtonPost.com. For example, Wedbush Equity Research, a respected analyst of the value of internet properties, stated that TheHuffingtonPost.com’s success and high value is directly related to the high quality content provided by Plaintiff and the Classes and Plaintiff’s and the Classes’ efforts to disseminate the content provided. Commenting on the value that TheHuffingtonPost.com brought to AOL, on February 11, 2011 Wedbush stated:

Execs have noted that part of the acquisition premium in the \$315 deal likely relates to the “R&D” which HuffPo can bring to AOL’s social marketing operations. HuffPo has been a leader in using social media strategies including game-ification of the content consumption process, badge awards for audience contributions, and cultivation of fans – to build the engagement of site users. One measure of HuffPo’s resulting success is that over the past year, it has more than doubled its comments per month to over 3m.

90. Further, a Merriman Capital Equity Research report dated February 8, 2011 also indicated that the high quality content provided by Plaintiff and the Classes created value for TheHuffingtonPost.com, especially because, unlike its purchaser, AOL, TheHuffingtonPost.com’s cost of content creation is minimal due to the fact that Plaintiff and the Classes are uncompensated for the high quality content provided:

HuffPost reached profitability in 2010 and is expected to generate over \$50M in ad sales in 2011 with around \$10M in OIBDA. That implies a rich valuation multiple of 6x sales and 31x OIBDA [sic]. However, the acquisition should generate around \$20M in cost synergies within the AOL operations with overlapping content areas. That would make the valuation multiples far more reasonable at 10X OIBDA. [ . . . ] Longer term, AOL expects HuffPost to reach a \$100M revenue run rate within the next 12 months and 30% operating margins. Considering the growth of HuffPost (22% audience growth in December 2010 to 25M unique visitors), the quality of the content and the brand, we view this acquisition as a long term positive, if the company can execute on integration with existing AOL content operations, and avoid disruption of HuffPost’s “citizen reporter” model and culture.

THEHUFFINGTONPOST.COM VALUES THE CONTENT PROVIDED BY PLAINTIFF  
AND THE CLASSES INCORRECTLY

91. TheHuffingtonPost.com admits that the content provided by Plaintiff and the Classes has value, but incorrectly calculates that value based on what is gained by Plaintiff and the Classes, not by Defendants. For example, Arianna Huffington, at a meeting in Beverly Hills, California, February 8, 2011 stated:

People have not fully adjusted to the fact that self-expression is, for many people, a new source of fulfillment and entertainment... We have 9,000 bloggers with a password and literally get hundreds of submissions that our editors have to



process. People are dying to blog for us...Do you think anybody really writes an op-ed for the NYT [sic] to get \$100? They write because they want the exposure for their views.

92. Nevertheless, despite touting the high level of “exposure” provided to Plaintiff and the Classes, TheHuffingtonPost.com jealously guards any hard data regarding the number of page views Plaintiff’s and the Classes’ content receive, although such data is readily available. TheHuffingtonPost.com actually affirmatively misrepresented its ability to garner this information in the “guidelines” distributed to Plaintiff and the Classes by electronic mail:

**How do I know how many readers my blog got?**

Unfortunately we don’t keep stats on all of our pages. However, the number of comments a post receives is one possible indication of the traction of one’s post, but is not necessarily a direct indication of views.

93. In addition to affirmatively misleading Plaintiff and the Classes regarding its ability to track page views, the amount of exposure that TheHuffingtonPost.com provides Plaintiff and the Classes is grossly overstated, over-emphasized and misrepresentative of the fact that Plaintiff and the Classes provide immense value for TheHuffingtonPost.com by allowing TheHuffingtonPost.com to obtain top quality content at no cost and by disseminating that content via social networking media and electronic mail, giving TheHuffingtonPost.com exposure, which allows for search engine optimization, web internet traffic and hence revenue, none of which is shared with Plaintiff and the Classes.

94. Finally, TheHuffingtonPost.com’s assertion that “writers write for free” serves to bring an ages-old falsity into the digital age, one this Court should reject. Indeed, writers, like all creators, deserve a share of the value they create and allowing such value to rest solely with Defendants is against equity and good conscience.

**THE MERGER**

95. On February 7, 2011, AOL entered into an Agreement and Plan of Merger dated as of February 6, 2011 with Headline Acquisition Corporation, a Delaware corporation ("MergerSub") and wholly-owned subsidiary of AOL for the acquisition by AOL of TheHuffingtonPost.com.

96. On March 4, 2011, AOL completed the acquisition of TheHuffingtonPost.com by means of a merger of MergerSub with and into TheHuffingtonPost.com, with TheHuffingtonPost.com becoming a wholly-owned subsidiary of AOL (the "Merger").

97. The Merger Agreement is not yet publicly available, but AOL states that it will be filed as an exhibit to its Form 10-Q for the quarterly period ended March 31, 2011.

98. The transaction value of the Merger is estimated to be around \$315 million (the "Merger Consideration").

99. Upon information and belief, at least \$105 million of the Merger Consideration recognized by TheHuffingtonPost.com, Huffington, Lerer and possibly others is due to the value created by the content provided by Plaintiff and the Classes and the value created by Plaintiff and the Classes in lowering the cost of content production for AOL as set forth above.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

#### **DECEPTIVE BUSINESS PRACTICE**

**(N.Y. Gen. Oblig. Law §349 et ff. as per the Terms and Conditions)**

#### **PLAINTIFF AND THE CLASSES v. DEFENDANTS**

100. Plaintiff and the Classes incorporate and re-allege each allegation set forth in the preceding paragraphs of this Complaint.

101. Defendants deceptively marketed themselves as a forum for news and ideas to get Plaintiff and the Classes to provide valuable content to it for free. In fact, TheHuffingtonPost.com intended to realize substantial revenues from the free content provided.

102. Defendants deceived, and continues to deceive, Plaintiff and the Classes in four ways: (1) by hiding the amount of page views attributed to the content created by Plaintiff and the Classes, thereby hiding the amount of revenue that Plaintiff and the Classes are providing; (2) by stating that information regarding the amount of internet traffic generated by each piece of content provided is unavailable when, in fact, it is available; (3) by not notifying Plaintiff and the Classes that the exposure received was decreasing over time as additional content was added; and (4) by presenting themselves as a free forum for ideas while actually building a product with substantial value.

103. It is deceptive to promise exposure (visibility, promotion and distribution) in lieu of monies to Plaintiff and the Classes, but then not provide a real and accurate measure of exposure and it is deceptive to solicit content on the promise of providing a free forum for ideas when, in fact, a product with tremendous value is being created by the solicited and uncompensated services provided.

104. This behavior was directed at the public generally, as any member of the public could apply to be a TheHuffingtonPost.com content provider and TheHuffingtonPost.com's deceptive practice has an impact on consumers at large.

105. Plaintiff and the Classes were injured by the deceptive act(s) of the Defendants, statutorily, as well as by way of lost opportunity, time and effort, which would have been more appropriately spent elsewhere had Defendants not acted deceptively.

**SECOND CAUSE OF ACTION  
UNJUST ENRICHMENT  
PLAINTIFF AND THE CLASSES v. DEFENDANTS**

106. Plaintiff and the Classes incorporate and re-allege each allegation set forth in the preceding paragraphs of this Complaint.

107. Plaintiff and the Classes provided valuable services to Defendants, services that were encouraged and accepted by Defendants.

108. The value of the services and writings provided by Plaintiff and the Classes but not paid for can be quantified by, among other ways, (1) the amount of revenue realized by Defendants from each piece of content provided by Plaintiff or the Classes' members; (2) the content production costs saved by Defendants when obtaining content from Plaintiff and the Classes as opposed to using compensated content creators; (3) the efforts of Plaintiffs and the Classes to direct traffic to TheHuffingtonPost.com; and (4) the increase in value of TheHuffingtonPost.com due to the labor and services provided by the Plaintiff and the Classes to the Defendants.

109. Defendants were enriched by the content provided and the publicizing efforts of Plaintiff and the Classes, and the revenues recognized by the same.

110. Plaintiff and the Classes were selected by Defendants to provide services.

111. Plaintiff and the Classes spent a substantial amount of time, effort and resources creating the content provided to TheHuffingtonPost.com.

112. The foregoing acts and omissions merit an unjust enrichment award for the Plaintiff and the Classes.

113. Defendants' enrichment came at the expense of Plaintiff and the Classes.

114. Plaintiff and the Damages Class are entitled to damages as a result of Defendants' unjust enrichment.

115. It is against equity and good conscience to permit Defendants to retain any more than two-thirds of the Merger Consideration when the value of the Merger Consideration arose by the collective efforts of the Plaintiff and the Classes.

116. Plaintiff and the Declaratory and Injunctive Relief Class seeks declaratory and injunctive relief prohibiting Defendants from continuing to be enriched by the value provided by Plaintiff and the Declaratory and Injunctive Relief Class, but not paid for.

#### **JURY DEMAND**

117. Plaintiff and the Classes hereby demands trial by jury, pursuant to Federal Rules of Civil Procedure 38(b), on all issues so triable.

#### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiff and the Classes pray that this Honorable Court grant the following relief:

- a. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;
- b. On Plaintiff's and the Classes' first cause of action for Deceptive Business Practices based on New York law, actual or statutory damages, whichever is greater and treble damages thereon to the statutory limit as the Court deems appropriate in an amount to be determined at trial;
- c. On Plaintiff's and the Classes' second cause of action for Unjust Enrichment, injunctive and declaratory relief and damages equal to the benefit bestowed on the Defendants by the labor, promotional efforts, creativity and work of the Plaintiff and the Classes and the cost that Defendants would have otherwise paid to obtain the content provided by Plaintiff and the Classes in an amount to be determined at trial but not less than \$105 million;


- d. Attorney's fees;
- e. Costs for this action.
- f. That the Court use its inherent powers to grant such other and further relief as it deems just and proper at law and in equity to vindicate the claims brought forth in this action by Plaintiff and the Classes on behalf of the Classes;

Dated: April 12, 2011

Respectfully submitted,



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